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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3089 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAISHREEBEN ALIAS JAYABEN MATHUBHAI NAKERIYA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3089 of 1994

MS VASUBEN P SHAH for Petitioner No. 1

MR MR Mengdey, learned A.G.P. for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the notice for attachment of the property in question dated 14.02.1994 by which the

petitioner is directed to deposit the amount of Rs.6870/towards the deficit stamp duty which is issued for recovery of the amount in pursuance of the order passed by the Dy.Collector, Stamp Duty Valuation, Surat dated 25.02.1993.

#. It appears from the record that the petitioner has purchased the property in question on 03.05.1989 by registered Sale Deed which was presented before the Sub-Registrar, Surat. It also appears from the record that the proceedings came to be initiated under Section 32-A of the Bombay Stamp Act, 1958 (`the Act' for short) and the order came to be passed on 25.02.1993 by which the petitioner is directed to pay the amount of Rs.6620/- by way of deficit stamp duty and Rs.250/- by way of penalty which is sought to be recovered by the impugned notice dated 14.02.1994. Having served with the impugned notice dated 14.02.1994, the petitioner has preferred the present petition under Article 226/227 of the Constitution of India challenging the notice as well as the order which came to be passed by the Dy.Collector, Stamp Duty Valuation, Surat.

#. Ms.Kalpana Brahmbhatt, learned advocate appearing for the petitioner, has submitted that the petitioner is never served with the notice under Rule 4 of the Market Value Rules, 1984 (`the Rules' for short) and/or even the order dated 25.02.1993 which is sought to be implemented and the amount is to be recovered vide impugned notice dated 14.02.1994 and therefore it is submitted that in fact the original order which is sought to be now implemented and the amount which is sought to be recovered on the basis of the said order is illegal and against the principles of natural justice.

#. No affidavit-in-reply is filed on behalf of the respondents though ample opportunity was given. The contention with regard to not receiving the notice under Rule 4 of the Rules as well as order dated 25.02.1993 is not denied by the respondents. Under the circumstances, original order dated 25.02.1993 itself which is now sought to be implemented is against the principles of natural justice. When the original order itself is illegal, the impugned notice dated 14.02.1994 also cannot sustain.

#. Considering the aforesaid facts and circumstances, the order passed by the Dy.Collector, Stamp Duty Valuation, Surat dated 25.02.1993 with regard to the document registration no.5475 is hereby quashed and set aside and recovery notice dated 14.02.1994 which is

consequential to the order dated 25.02.1993 is also quashed and set aside. The matter is remanded to the Dy.Collector, Stamp Duty Valuation, Surat to pass appropriate fresh order on its own merits and in accordance with law after giving opportunity to the petitioner and after serving the notice under Rule 4(2) of the Rules.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)